UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LG CAPITAL FUNDING, LLC,	:	16-CV-2217(CBA)(LB)
Plaintiff,	:	U.S. Courthouse
	:	Brooklyn, New York
-against-	:	TRANSCRIPT OF
	:	CIVIL CAUSE FOR ORDER
	:	TO SHOW CAUSE
	:	
	:	August 17, 2016
VAPE HOLDINGS, INC.,	:	10:30 a.m.
Defendant.	:	

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BEFORE:
HONORABLE LOIS BLOOM, U.S.M.J.

APPEARANCES:

For the Plaintiff: KEVIN KEHRLI, ESQ.
MICHAEL STEINMETZ, ESQ.

For the Defendant: MATTHEW PRESS, ESQ.

Court Reporter: Holly Driscoll, CSR
Official Court Reporter
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Proceedings recorded by mechanical stenography, transcript produced by Computer-Assisted Transcript.

THE COURT: Please be seated.

THE CLERK: Civil cause for hearing, docket number 16-CV-2217, LG Capital Funding, LLC against VAPE Holdings, Incorporated.

Will the parties please state your appearances.

MR. KEHRLI: Good morning, Your Honor, Kevin Kehrli of the law firm Garson, Segal, Steinmetz & Fladgate. With me is Michael Steinmetz and behind me is Joseph Lerman from LG Capital.

MR. LERMAN: Good morning, Your Honor.

MR. PRESS: Good morning, Your Honor, Matthew Press for VAPE Holdings, Inc., Press Law Firm, PLLC.

THE CLERK: The Honorable Lois Bloom presiding.

THE COURT: Good morning, Mr. Kehrli, Mr. Steinmetz, Mr. Lerman and Mr. Press.

This is a hearing on plaintiff's motion for preliminary injunction against VAPE Holdings, Inc. and Judge Amon has referred this matter to me for a Report and Recommendation.

On May 3rd, 2016, LG commenced this action against VAPE alleging breach of contract for VAPE's failure to comply with the terms of the $75,000 8 percent convertible redeemable note that VAPE had issued to LG. Upon commencing the action, plaintiff moved for preliminary injunction. Judge Amon denied plaintiff's motion concluding that plaintiff had not

demonstrated irreparable harm, and that's at ECF 18.

After Judge Amon denied plaintiff's motion the parties appeared before me for a settlement conference. At that settlement conference on June 8th, 2016 the parties settled this matter on the record and the settlement was reduced to a writing signed by counsel for both sides on June 24th, 2016, and that settlement agreement is found at ECF number 25-4.

Under the terms of the settlement agreement, VAPE was to place in plaintiff's counsel's escrow account $151,000 by June 27th, 2016. In exchange, there would be a mutual general release and LG would assign the note. VAPE failed to remit the $151,000 into plaintiff's counsel's escrow account by June 27, 2016.

I then held three telephone conferences with the parties on July 18th, July 20th, and July 26th as VAPE stated that with time it would be able to satisfy its obligation under the settlement agreement, however, no progress was made.

Accordingly, on August 4th, 2016, plaintiff's counsel moved for a prohibitory injunction enjoining VAPE from issuing further conversions under any and all outstanding convertible instruments during the pendency of this action, from issuing transfer agent instructions to reserve shares for the purpose of conversions under any and all outstanding convertible instruments during the pendency of this action,

from issuing any further convertible notes or other debt instruments during the pendency of this action, and finding that the posting of a bond would not be required under Federal Rule of Civil Procedure 65.

I have reviewed and considered both sides' papers and I am prepared to hear arguments today.

I note that plaintiff moves to strike defendant's opposition to the motion because defendant's filing was made approximately four hours late, that's ECF number 28. As no prejudice was suffered by this short delay, that motion is denied. Okay.

First question, Mr. Kehrli and Mr. Steinmetz, did they pay $151,000 into plaintiff's escrow account?

MR. KEHRLI: No, they did not, Your Honor.

THE COURT: Has VAPE made any payment toward the settlement, full or partial?

MR. KEHRLI: No, Your Honor.

THE COURT: Now, I note before I came down the parties asked for some time to discuss whether or not the case could be resolved, so please bring me up to speed, Mr. Kehrli.

MR. KEHRLI: We did briefly discuss. In our opinion, we did not get far at all. That's sort of all I can say I guess. We did not find the conversation productive in the end.

THE COURT: So, can you give me, other than what

you've said in your papers, whatever it is that you want to argue. My question for you is what has changed regarding VAPE's financial condition since the hearing before Judge Amon on May 27 beside the breach of the settlement agreement in this particular matter?

MR. KEHRLI: Well, I think it hinges on the two contracts which Judge Amon cited and relied on in coming to her decision, one of which was a term sheet whereby GHS agreed to buy out all of the other outstanding notes, and the other was an agreement to buy $2 million worth of shares which GHS had stated or which defendant, I apologize, had stated were ample enough resources to draw on to satisfy all of their outstanding notes and debts. Clearly, having gone through the process of trying to draw on those ample resources, those contracts -- well, the first is only a proposed term sheet so it's essentially nonbinding to GHS, and the second, those ample resources aren't exactly there for defendant to draw on.

The stock of GHS since -- or VAPE, I apologize again, from the date of filing to today has gone down by 400 percent. It started at .006, today it is at .0015. That means the value of the conversion which started this whole action has also gone down by 400 percent. And basically we've seen that VAPE does not have any resources to satisfy the agreement which I genuinely believed that Mr. Press and the CEO, Justin Braun, wanted to make to settle this matter. The

only other explanation, if they did not truly intend, was that it was done in bad faith to lower the potential exposure in this action which I did refer to in my papers but I genuinely do not want to believe that that's the case.

THE COURT: Anything else that you want to add?

MR. KEHRLI: No, Your Honor, not at this time.

THE COURT: Now, Mr. Press.

MR. PRESS: Thank you, Your Honor. There are some things I'd like to add. This is an extraordinary form of relief they're seeking. In effect, what they are saying is they want to cut off my client's access to loans. Now, regardless of where a company is, from being a start-up to being a very mature company, they need loans. It is very important to running a business. A very mature company could require loans in order to get through a lumpy income period and it has nothing to do with the financial position of the company, and what they want to do is cut it off.

What they actually admit on page 14 of their memorandum of law, they admit that it could have a negative effect of preventing VAPE from being able to raise any more money. Now, that's very big problem. One of the things that I told my colleagues in the hallway before was that they don't want this relief because although VAPE right now is a functioning company that has earnings and is moving along in its business plan, if you took its ability to fund itself

along the way interstitially with loans, I suspect that it would have to file Chapter 11, maybe not.

THE COURT: Let me stop you for a moment.

MR. PRESS: Yes.

THE COURT: You say VAPE right now is a functioning company. The plaintiff argues that VAPE is imminently insolvent because VAPE has approximately $5 million in liabilities which will be due in 12 months and only approximately $629,000 in assets. This is at Mr. Lerman's declaration, paragraph 17. What is the financial status of VAPE?

MR. PRESS: I think that what Judge Amon found, which is similar to what Judge Sullivan found in a similar case involving the same company earlier in the year, is that VAPE is an emerging company and its debts are significant but these are longer term debts. It is able to pay its bills.

What happened in this case was, and Your Honor knows this because you were in the room, an agent or I think a principal of GHS was on the phone with Justin Braun and said that they would pay the $151,000, the note assignment. In effect, GHS, they're the lender. VAPE needs GHS and has to work with it and GHS turned out to have a mind of its own. After agreeing to pay the $151,000 they attached some further conditions. I didn't think the conditions were unreasonable, we tried to take care of it and, in fact, Mr. Kehrli admits in

paragraph 12 of his declaration that GHS said that it was willing to pay, it is just that it wanted to pay in three pieces. Now, that wasn't what we agreed, I understand that, but they're willing to pay.

THE COURT: Well, quite frankly, that VAPE needs GHS and that GHS is controlling the purse strings here creates the very untenable position that plaintiff finds itself in. It relied in good faith on the CEO of VAPE who said that this would conclude this --

MR. PRESS: Yes.

THE COURT: -- relationship and though you've made the representation, Mr. Press, that I was in the room and heard that the CEO, who's no longer the CEO of VAPE, was on the phone with GHS, I did not have GHS on the phone, GHS is not a party here and Mr. Braun was representing to the Court that this would be a deal that GHS would sign on to. I did not have GHS in the room, there is no GHS as a party to this action. So, that VAPE needs GHS, I believe that the plaintiffs are probably correct, GHS is using VAPE at this point for its own purposes and perhaps GHS should have or could have been named as a party to an action but they're not before the Court and that's where we find ourselves.

But my question was really about your client's financial solvency. When you say that they could go bankrupt, the quotes that Mr. Lerman makes in his declaration I believe

are from a public filing, is there anything that has been updated since that time?

MR. PRESS: Not that I'm aware of, Your Honor, but what I would say, there is no material difference between the financial condition of the company now and when Judge Amon found that there wasn't irreparable harm or when Judge Sullivan found in the Southern District that there wasn't irreparable harm. That hasn't changed. They've been reliant on lenders, that's known. They borrowed money from LG and other companies. They're relying on lenders, they are, many companies are. And so, in most companies if you said you can't borrow, it would be a major problem.

Now, turning to where we are now and how we can practically resolve this case. I was very surprised to see this motion. I thought that they were going to renew their original motion to try to convert their note, which I don't think that they were entitled to, I think the judge was correct. This motion would be highly destructive. What they're seeking to do is to -- I believe it's self-defeating, they're not going to get -- if the intention was to -- they say they want to stabilize the share price presumably so they can convert but they haven't asked to convert, they haven't made a motion to try to convert. So, what they're going to do, what they're proposing to do is extraordinary, they're going to say cut off the life blood of the company now and

we'll just wait and see if we're going to convert.

Now, I want to tell you that in discussions I had with Mr. Kehrli, one possible end game that was suggested to me was to try to take over the corporate shell of the company. I don't know if the intention of this motion is to drive the company into bankruptcy is part of some other strategy. I think the best way to do this is let them -- I don't think this motion should be granted. I think if they want, they can try to pursue the $151,000 which I've been trying mightily to get them and, as Mr. Kehrli states in his affidavit, it's been offered to him but just in terms different from what we agreed, I understand that, or there are other practical things we can try to do, but I think this relief they're seeking, I think it is unwarranted.

I think they're not likely to succeed on the merits. I mean all the arguments we made in connection with the first motion I would incorporate here. I think the note itself has severe problems but, most of all, this relief that is sought here is misguided, it is going to do the opposite of what they want and I think it would be a huge mistake to grant it.

THE COURT: Anything in reply?

MR. KEHRLI: Yes, Your Honor. First of all, I do want to say to Mr. Press that I find bringing up what we had in a sort of private conversation on the record was a little inappropriate. That is not the end game here. The end game

is to stop the shares from being taken and sold away by both related shareholders and GHS. It is clearly happening. As Exhibit B to Mr. Lerner's declaration, you can see the trade volume is higher than it was when we started this action. So, whether it is Mr. Braun who received a stock compensation package upon his resignation or whether it is GHS, someone is converting, someone is selling, someone is profiting, it is not us, we were one of the first note holders here. That is my client's issue. My client is entitled to convert this stock at a profit.

THE COURT: What about Mr. Press's point that that's not what your motion is seeking?

MR. KEHRLI: Because if defendant can no longer offer these conversions to everyone else, it will put defendant in a position where they have to honor our agreement, the first agreement, and if they start honoring it, then, you know, we would make a motion to the Court to lift these restrictions.

THE COURT: But wait, stop, roll it back a bit. The note was not converted upon your demand, that was what you were entitled to, to convert the note.

MR. KEHRLI: Correct.

THE COURT: They did not do that.

MR. KEHRLI: Correct.

THE COURT: You're not asking now to convert the

note because it has lost so much value that that wouldn't give you the return that your client is seeking, but that's what the note entitled you to, to convert.

MR. KEHRLI: Yes, we are trying to maintain the status quo of the stock price which, as I think we've demonstrated, has plummeted. The value of the entire note has now plummeted.

THE COURT: I understand but the note entitled you to $75,000 at 8 percent and that you are entitled to convert the note on demand. They failed to allow the conversion which led to the lawsuit, led to the request for preliminary injunctive relief, but now what you are seeking is different. You're not seeking to convert the note, you're seeking to freeze the defendant's ability to convert any notes.

MR. KEHRLI: That's correct, Your Honor. We want to level the playing field that we're not being allowed to convert, they've shown no intention to let us convert but they are favoring certain investors including insiders, the legality of which I can't speak to, but there are several people converting, several people, companies. At this point we'd like to level the playing field, stop the bleeding and pursue our original claims on terms where we can see an end, where there are shares left for my client to convert.

THE COURT: Good segue. Thank you very much for that segue. The case has settled for a sum certain, that was

before the Court and is binding and enforceable. What do you say to that?

MR. KEHRLI: Upon defendant's breach, we're no longer bound by that contract.

THE COURT: Well, you cite a case for that proposition but upon reading those cases, I don't find that they support your position. You're citing to a Judge Koeltl case and in the Judge Koeltl case -- let me just pull it out -- so, your reliance is on NAS Electronics, Inc. versus Transtech Electronics PTE, Ltd., 262 F.Supp. 2d 134, 145, (SDNY 2003), and you rely on this case for the proposition that you may pursue your original claim against VAPE and I find that your reliance on that case was misplaced. In that case judgment had been entered against plaintiffs in the amount of $3.2 million after they breached the settlement agreement. Plaintiffs then filed a new action in state court which was removed to the Southern District of New York arguing that defendant had breached the contract for failure to perform on the settlement agreement. The Court granted the defendant summary judgment on the plaintiff's breach of contract claim holding that the defendants, the non-breaching parties were discharged from performing any further obligations under the contract after the breach and that they could elect to terminate the contract and sue for damages. That's not the situation we have here, Mr. Kehrli.

MR. KEHRLI: Your Honor, in my papers I tried to frame and I thought I made clear that when you go through that contract, there were a series of events that had to occur for the next event to happen. Event one was the money had to come into my firm's escrow; event two, there was an assignment; event three were the mutual general releases.

THE COURT: And you did not do any of those steps. Step one didn't happen and you didn't do step two and step three.

MR. KEHRLI: Right.

THE COURT: Which, extrapolating from Judge Koeltl's decision, you would be relieved of step two and step three because they didn't deposit the money into the escrow account. It doesn't mean that you get to start over at square one and that there is no settlement agreement.

MR. KEHRLI: It is our position that we would be entitled to any general remedy under contract law and that in this case due to the delays, the decline in the financial situation of VAPE and, frankly, the bad faith that went into the settlement agreement, that we should be placed in the position we were prior to entering into this agreement.

THE COURT: But, again, do you recognize that there's a big difference between the case that you're citing to the Court, the Judge Koeltl case, and the case that you are involved in against VAPE?

MR. KEHRLI: I do, Your Honor, and the only last thing I would add is that if Your Honor were to hold us to the damages that we incurred as a result of this breach, they would be very similar to our damages in the beginning of this case because we feel that this delay has caused much more harm than -- it's just extending things longer and longer while the company deteriorates.

THE COURT: But, again, there was a binding and enforceable settlement agreement entered into before the Court and then reduced to a writing which settled the case for a sum certain; why would that not be sufficient?

MR. KEHRLI: Because I think it relates back to the other case I cited.

THE COURT: Which is Media Group versus HSN Direct International Limited, 202 F.R.D. 110 (SDNY 2001). It's a Judge Lynch case which again you've cited but I don't believe it supports your position. In that case Judge Lynch denied plaintiff's motion to amend a complaint to add a claim of recision after defendant allegedly failed to comply with the settlement agreement. Judge Lynch stated that the burden of a rescinded settlement agreement on the parties and on the Court would be particularly severe and basically Judge Lynch said that you shouldn't be able to then use that failure to comply with the settlement agreement to add or amend because people would manipulate their strategy in civil cases; instead of

acting to effectuate a settlement, they would use that as one more reason to add relief.

MR. KEHRLI: I think the same general premise applies here. The manipulation that's occurring is defendant seeing the bar set here based on our original claims and saying I'll agree to this 151, maybe we'll make it, maybe we won't but that will at least set the bar here precluding my client from going back to his original claims and that completely undermines the settlement process.

THE COURT: But this is the part that I don't understand, the note was a $75,000 note, I understand it had an 8 percent interest, when you were looking to convert the note, the value was at a certain amount. Nobody has told me when you first asked to convert and it was not the full amount of the note, it was over $1,000 but under $2,000 of the note, nobody told me what the value would have been had the conversion happened at that very moment. Likewise, nobody has told me now what the difference would be on the value if you converted the whole note and my thought is that when you bargained for $151,000, that your clients are smart enough business people that that would cover their entire exposure here.

MR. KEHRLI: During our conference with Your Honor we showed you several different calculations. If you'll recall, it was the average of five days --

THE COURT: I'm so sorry, I don't, Mr. Kehrli, it's not part of the motion and I don't keep those numbers in my head.

MR. KEHRLI: I apologize. I will explain those figures. It was an average of five days of five different trading points in each of those days and it calculated out to certain numbers. Now, we concede in both our opening papers and our reply that it is nearly impossible to calculate this with any precision. As I mentioned earlier, there's been a 400 percent change. There's changes in trading volume.

THE COURT: But why isn't the $151,000 that the case settled for sufficient?

MR. KEHRLI: It was sufficient at that time because my client was willing to let all of this go for that amount of money on that particular day.

THE COURT: I understand but we're now two months down the road.

MR. KEHRLI: We are.

THE COURT: A month and a half down the road.

MR. KEHRLI: We are, Your Honor, and, again, the stock price keeps going down.

THE COURT: The stock price may fluctuate but the amount that the case settled for would be the same amount.

MR. KEHRLI: That's correct, Your Honor, but I mean two months have passed, my client did not enter into that

agreement for the purposes of getting a judgment against a company that, as we both essentially admitted, doesn't have the money to pay it.

THE COURT: Thank you.

Do you want to be heard on this, Mr. Press?

MR. PRESS: I do, Your Honor. First of all, I think that the idea the stock has to be -- well, strike that, strike that.

I just want to return to the deal that we negotiated. It was my understanding that $151,000 represented a compromise between my client's position that the note was not enforceable and also our differing monetary calculations for what the damages would be for failure to perform the conversion, okay. We had differences of opinion. Our number would be -- even if the note was enforceable, our number was south of $151,000. Theirs, of course, was far more than $151,000. $151,000 was a fair compromise under the circumstances and we agreed to it.

At this point one thing I find interesting is they complain that the stock price is sinking, okay, and so they say we need this relief so we can stabilize the stock price because it is getting -- because, in effect, they're saying we want to convert but what we could get for the shares is getting less and less and less but they do have this liquidated $151,000. As Your Honor said, it doesn't change.

I don't know why they don't want that, why are they pursuing this, I simply don't understand.

THE COURT: I think you do understand, Mr. Press, and I sort of understand that there are things going on behind the scenes, whether we're going to be able to reach behind the scenes, they negotiated in good faith and they feel they've been manipulated by somebody who is pulling the strings at VAPE. I see that. However, again, I don't know that this motion is the answer to that. Again, they have been exceedingly courteous in not trying to say that there was bad faith. They believe that you and your client at the time intended to settle the case on the terms that had been agreed to. So, I would not push them past that position. However, whether Braun was a puppet, whether Braun had any influence over the GHS people who seem to be the sticking point here, I don't know. I do believe that the plaintiffs have a good faith interest in getting their money out of VAPE and that they're trying to do it in a way that will exert their position and will not be to their detriment in the market. So, if every investor could be manipulated by somebody behind the scenes, which I believe is what LG Capital thinks is happening with VAPE, that would undermine their position in the market. So, I do think that there are things that are going on here that lead LG Capital in good faith to seek the relief they're seeking. I just want to hear is there any end

argument regarding the motion?

MR. PRESS: Well, I just, having heard what you just said, Your Honor, I just first to need to quickly address, I've been a participant in all these negotiations and my impression, I'm just a lawyer but my impression is that everybody wanted the deal to happen, everybody did it in good faith. My only question about GHS I think and my subjective impression of GHS is that when the gentleman who was on the phone with Mr. Braun said yes, he wasn't thinking everything through and then he kind of woke up with --

THE COURT: That's ridiculous, there's a federal court on the end of the other line --

MR. PRESS: Yeah.

THE COURT: -- and he wasn't thinking it through and then --

MR. PRESS: He's not my client, Your Honor.

THE COURT: Quite frankly, if GHS was named as a party here, I would find that there had been apparent authority but GHS is not a party here so, again, my hands are tied as to GHS's involvement.

Anything else on the motion?

MR. PRESS: Well, once again, I just want to close on the fact that the relief they're seeking, I understand they have a complaint, I understand their complaint, we've discussed it. I just think that the relief they're seeking

here is clearly not the answer, it is self-defeating, it is not authorized under the law, it is not narrowly tailored to achieve any purpose. They say this will stabilize the stock price. How do they know. Stock prices go up and down in companies all the time. How can they say this is going to have that effect, I think it's really a stretch and it's going to cause such a damage to VAPE that I don't think anybody really wants this and I think it would be a big mistake to grant the relief. Thank you, Your Honor.

THE COURT: Thank you. We're going to take a moment, I'll be right back.

MR. KEHRLI: Thank you, Your Honor.

(Recess taken.)

THE COURT: The Honorable Carol B. Amon referred plaintiff's motion for a preliminary injunction to me for a Report and Recommendation in accordance with 28, United States Code, Section 636(b). My Report and Recommendation to Judge Amon is as follows. I have considered the parties' papers and I have heard oral argument. I respectfully recommend that plaintiff's motion for a preliminary injunction should be denied as plaintiff has not met the irreparable harm standard for preliminary injunctive relief. Nonetheless, as there is no dispute that VAPE has breached the binding and enforceable settlement agreement, I recommend that judgment should be entered in favor of LG against VAPE in the amount of $151,000.

I recommend that plaintiff's motion for a preliminary injunction should be denied as I find that LG has not sufficiently demonstrated that it will suffer irreparable harm in the absence of preliminary relief. I also agree that the relief that plaintiff is seeking is extraordinary. As the parties know, the Court must pay "particular attention to whether the remedies available at law, such as monetary damages, are inadequate to compensate for that injury," and I am citing to Salinger versus Colting, 607 F.3d 68, 80 (2d Cir. 2010). While imminent insolvency may be an exception to the general rule that a monetary injury does not constitute irreparable harm, "a movant must show the risk of insolvency is likely and imminent." CRP/Extell Parcel I, L.P. versus Cuomo, 394 F.App'x 779, 782 (2d Cir. 2010.) These cases were all relied upon by Judge Amon in her earlier decision.

First, the Court is not persuaded that monetary damages are inadequate to compensate plaintiff's injury and it seems to me that LG has conflated or confused the injury it alleges from VAPE's breach of the note's obligation with the injury it alleges from the breach of the settlement agreement for the sum of $151,000. Second, even if this Court were to agree that monetary damages are insufficient to compensate plaintiff for the injury, plaintiff has not shown that the risk of VAPE's insolvency is likely and imminent. While VAPE's breach of the settlement agreement undermines any

confidence in VAPE's financial future, it does not establish that VAPE is imminently insolvent. As Judge Amon found in her initial denial of plaintiff's motion for a preliminary injunction, and as defendant's counsel stated here today, there is no material difference between what was before Judge Amon in May and what has been presented here today as to VAPE's imminent insolvency. LG has "at most shown that there is a possibility that the company may be insolvent before the conclusion of the litigation, but this possibility is speculative and cannot satisfy [LG's] burden." And I'm citing to Judge Amon's memo and order which cites to a Southern District of New York 2003 case, Meringolo. Further, LG does not cite to any cases in support of their position where a preliminary injunction was granted on similar facts. Therefore, as LG has failed to demonstrate an irreparable injury, the Court recommends that their motion for a preliminary injunction should be denied.

However, in light of VAPE's breach of the settlement agreement and Paragraph 3 of the parties' signed settlement agreement which states this Court "may retain jurisdiction over this matter and may enter judgment or preliminary relief against either party in the event of any failure to comply with the terms contained in the settlement agreement," I recommend that a judgment in the amount of $151,000 be entered in favor of LG Capital Funding LLC against VAPE Holdings,

Inc., and I cite to the settlement agreement which is filed at ECF number 21-1 and it is Exhibit A to ECF number 25-4. I find no basis or reason to delay the entry of the judgment against defendant in this action. In making this recommendation, I also find an alternative basis to deny plaintiff's motion for preliminary injunction, that is that upon the entry of judgment, the preliminary relief plaintiff seeks is moot. "A preliminary injunction is, by definition, preliminary relief and any preliminary injunction would no longer be operative after the entry of the final judgment." Equiom(Isle of Mann) Limited versus Smith Electric Vehicles U.S. Corp. No. 15-CV-2337 (RJS) and 15-CV-2783 (RJS), 2015 WL 55470765, *1 (SDNY September 18, 201) (citation omitted).

In Equiom, defendants breached the settlement agreement by failing to make payments of over $1.7 million and plaintiff moved for preliminary and other relief. Judge Sullivan denied plaintiff's motion for a preliminary injunction and ordered entry of the judgment. Here, as in Equiom, I find that entry of judgment against defendant in the amount the parties had agreed upon renders plaintiff's motion for a preliminary injunction moot. As set forth in Equiom, should judgment be entered against defendant, LG may seek all post-judgment relief that it is entitled to as set forth in Rules 69 and 70 of the Federal Rules of Civil Procedure.

In conclusion, I recommend that plaintiff's motion

for a preliminary injunction should be denied but that judgment should be entered in favor of LG Capital against VAPE in the amount of $151,000 as the parties agreed to both on the record before me at the June 8th, 2016 settlement conference and as set forth in the signed settlement agreement dated June 24th, 2016.

Objections: Pursuant to 28, United States Code, Section 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties have fourteen days from today's hearing, until August 31st, 2016, to electronically file written objections. Any request for an extension of time to file an objections must be made within the fourteen-day period. Failure to file a timely objection to this Report generally waives any further judicial review. Cite to Marcella versus Capital Distribution Physicians' Health Plan, Inc. 293 F.3d 42, 46, (2d Cir. 2002).

Is there anything else that needs to be addressed on behalf of the plaintiff?

MR. KEHRLI: No, Your Honor, thank you.

THE COURT: Is there anything further that needs to be addressed on behalf of the defendant?

MR. PRESS: No, Your Honor, thank you.

THE COURT: Then this matter is adjourned. Thank you.

(Time noted: 11:30 a.m.) (End of proceedings.)